

# Telecommunications



13

Improved Internet connectivity is essential to promote innovation, reduce socioeconomic inequality at home, and improve America's global economic competitiveness abroad. To further connectivity and lighten the current regulatory burden on the American people, Congress should:

- Remove regulatory barriers and reform programs like universal service funding;
- Focus on oversight and reform of that Broadband Equity Access Deployment program; and
- Allow as much spectrum to move to best and highest use in the private sector by reauthorizing the Federal Communications Commission's auction authority.

**Universal Service Fund surcharge:** Broadband subsidy programs should be under congressional oversight. To that end, the current universal service funding needs reform and Congress should shift the USF's funding from the current surcharge to direct congressional appropriations.

The Federal Communications Commission (FCC) imposes the surcharge on revenues for telecommunications services and telecommunications service providers generally pass it on to consumers on their bill. The surcharge was only 3 percent in 1998, but it steadily increased to reach 34.4 percent as of the third quarter of 2024. While applied to telecommunications services, funds received from the surcharge are largely used for broadband networks.

The 5th Circuit Federal Court of Appeals recently held that the USF surcharge is not a fee (as the FCC has labelled it) but rather an unconstitutional tax because Congress violated the non-delegation doctrine by delegating its taxing power to the FCC. While other federal courts of appeals have upheld the surcharge, the 5th Circuit ruling demonstrates the need for reform.

Shifting the USF surcharge to direct congressional appropriations will have three advantages over the current funding mechanism:

1. Direct congressional appropriations will address the 5th Circuit's ruling that Congress violated the non-delegation doctrine by reclaiming its taxing power.
2. Appropriations can help Congress hold the FCC accountable for how funds are used according to the Government Accountability Office. USF programs are plagued by inefficiency and the lack of internal controls, and other sources have also criticized the misuse of funds.
3. Appropriations will allow Congress to set a hard limit on the amount of USF assistance, encouraging more efficient usage of such funds period to that end, Congress should consider annual reviews of different USF programs effectiveness at meeting their intended targets such reviews can enable evidence based decision making about which programs should continue to be funded and how much funding should be allocated.

It is important that Congress take these steps to reform the USF surcharge.

**Broadband equity:** The Broadband Equity, Access and Deployment Program (BEAD) was signed into law by President Biden in November 2021 as part of the Infrastructure Investment and Jobs Act. BEAD dedicates \$42.45 billion to construct broadband networks, establish subsidies to offset the cost of Internet service for lower income households and create programs to provide end users with devices and training. The overriding goal of the program is to address the digital divide. It provides funding grants to the states.

The National Telecommunications and Information Administration (NTIA) is charged with overseeing the program and allocating funds. However, as of September 2024 and almost 3 years since the program was enacted, no funds have been distributed and 13 states are awaiting funding. This is due to the NTIA's cumbersome and detailed bureaucratic application and review processes.

Congress should assert its oversight authority and push the NTIA to reform its processes so that funds can be expeditiously allocated in accordance with the congressional appropriation. This can be done while ensuring that allocation challenge processes prevent overbuilding of already served areas. Reforms can include simplifying and streamlining the NTIA's processes and requirements. The goal should be to fulfill the appropriation as made by Congress and not allow bureaucratic process delays to win.

The USF surcharge and BEAD demonstrate the pitfalls of large scale subsidy programs. Congress should prioritize private investment and market competition for broadband funding and deployment, and the FCC should seek to reduce regulatory barriers to private broadband investment and to promote competition

between different types of Internet service providers, such as cable, fiber, and satellite. Creating a market friendly regulatory environment is crucial to reducing broadband subscription prices and ensuring universal Internet access while lowering costs to taxpayers.

**Spectrum allocation:** The United States is engaged in a global technology competition and is in danger of falling behind by failing to move spectrum from government control into the private sector. Spectrum is a finite resource that is necessary for both cellular networks and fixed wireless services. An increased amount of spectrum in the marketplace is necessary to enable internet service providers to meet ever increasing multi-gigabit broadband speed demands. Without it, next generation technology will be in jeopardy and America will be at risk of falling behind. Federal agencies currently control most of the available spectrum and the FCC's spectrum auction authority has lapsed for the first time in 30 years.

Congress should prioritize reauthorizing the FCC's auction authority and moving more spectrum to its best and highest use to further market competition and innovation. This includes exclusive use mid-band spectrum that is well suited for 5G and shared spectrum that is used by services such as Wi-Fi and Bluetooth. These steps are necessary to maintain technological competitiveness which in turn is necessary for national security. There are bills before Congress dealing with spectrum allocation, including the Sens. Ten Cruz (R-TX) John Thune (R-SD)-sponsored Spectrum Pipeline Act of 2024 and the Sen. Maria Cantwell (D-WA)-sponsored Spectrum and National Security Act.

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#### **For further reading:**

**Brief of Amici Curiae Competitive Enterprise Institute**, Free State Foundation, Christopher Demuth, Harold Furchtgott-Roth, Michael S. Greve, and Randolph J. May in Support of Petitioners, [CEI-et-al.-amicus-brief-filed-copy.pdf](#).

**Brian A. Rankin**, "Spectrum Spectacle: Security and competitiveness demand action on spectrum," [Spectrum spectacle: Security and competitiveness demand action on spectrum - Competitive Enterprise Institute \(cei.org\)](#).

**Brian A. Rankin**, "Wi-Fi: A freedom and innovation success story," [Wi-Fi: A freedom and innovation success story - Competitive Enterprise Institute \(cei.org\)](#).